



41 CFR Part 102-77

[FMR Case 2021-02; Docket No. GSA-FMR-2021-0024, Sequence No. 1]

RIN 3090-AK47

Federal Management Regulation; Art in Architecture

AGENCIES: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule with 60-day comment period.

SUMMARY: GSA is issuing a final rule amending the Federal Management Regulation (FMR) to update certain provisions of the Art in Architecture program. These revisions clarify the policies to collect, manage, fund, and commission visual art in Federal buildings. The rule updates policies consistent with the requirements of the Executive order (E.O.) issued May 14, 2021, titled “Revocation of Certain Presidential Actions and Technical Amendment.” The rule also supports the goals of the E.O. issued January 20, 2021, titled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”

DATES: *Effective date:* [INSERT DATE OF FILING FOR PUBLIC INSPECTION WITH THE OFFICE OF THE FEDERAL REGISTER].

Comments due date: Please submit comments by the method listed in the ADDRESSES section by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] for consideration in future rulemaking.

ADDRESSES: Submit comments in response to FMR Case 2021-02 to:

Regulations.gov: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FMR Case 2021-02.” Select the link “Comment Now” that corresponds with FMR Case 2021-02. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FMR

Case 2021-02” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternative instructions.

Instructions: Please submit comments only and cite FMR Case 2021-02 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal or business confidential information, or both, provided. To confirm receipt of your comment(s), please check www.regulations.gov approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202-208-2956 or chris.coneeney@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FMR Case 2021-02.

SUPPLEMENTARY INFORMATION:

I. History of the Program

Art in U.S. public buildings has a long history, beginning in the 1850s in the U.S. Custom House in New Orleans and continuing at the U.S. Capitol and through the Beaux-Arts era when courthouses and custom houses throughout the Nation were embellished with works of art. In the 1930s, the Great Depression saw the creation of relief programs of the New Deal, including four art programs: the Public Works of Art, which employed artists to create artworks; the Section of Fine Arts (the Section), a Treasury Department effort that awarded commissions to artists through competitions to secure the best quality artwork for installation in public buildings, including Federal buildings, courthouses and post offices; the Treasury Relief Art Project, which employed artists to create paintings and sculptures for existing Federal buildings; and the largest of the programs in scope and numbers of artists employed, the Works Progress Administration, which included the

Federal Art Project (FAP). From 1935 to 1943, thousands of artists created over 200,000 works of art, and under the FAP, these artworks were distributed to State and municipal facilities. The New Deal art programs brought art into everyday life in places like post offices, schools, hospitals, and libraries, and showed the importance of art in a democracy. They also built up the public art collection in the U.S. and set the stage for Federal arts funding. The Section also instituted the influential percent-for-art policy idea: 1% of the total building construction cost would be set aside for the building's embellishment. In 1963, GSA started the Fine Arts in New Federal Buildings program, a percent-for-art policy that in 1972 became the Art in Architecture program. This has become a model for many State and municipal community art programs. These artworks enhance the civic meaning of Federal architecture and showcase the vibrancy of American visual arts. Together, the art and architecture of Federal buildings create a lasting cultural legacy. The activities of the Art in Architecture program addressed in this regulation apply only to federally owned facilities under the jurisdiction, custody and control of GSA. New art commissions are included in capital projects authorized by Congress for the construction or major modernization of a building by GSA. Other agencies, such as the U.S. Department of State, operate art programs under separate authorities.

Art programs in Federal buildings not only create a better environment for conducting Government business, they offer a space to represent equitably the diversity of the Nation and to support the arts in communities that have Federal buildings. In accordance with E.O. 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," issued January 20, 2021, all agencies are directed to "promote [...] equitable opportunities" for access to programs and services. Previous definitions of acceptable art styles limited participation in Art in Architecture programs, and thus art projects in the past did not necessarily reflect the diversity of the

communities in which they were located. Increasing equitable access for artists of different backgrounds and art styles to participate in these programs is a priority for achieving the goals of E.O. 13985.

II. Current Program and Discussion of Proposed Changes with this Final Rule

GSA reserves one-half of one percent of the estimated construction cost of each new Federal building and selects new prospectus-level modernization or repair and alteration projects to commission project artists. Artist candidates for Art in Architecture commissions are most often identified from GSA's National Artist Registry (Registry), which is a database of artists who have previously submitted digital images of their past portfolio work. Artists may also be identified through other sources, such as from posted solicitations for active procurements. There is no fee to join the Registry, which currently has approximately 1,700 artists and is open to all artists who are U.S. citizens or lawful permanent residents. Instructions for joining the Registry can be found at https://www.gsa.gov/cdnstatic/National_Artist_Registry_Instructions_MAR_2016.pdf and requires the submission of GSA Form 7437, a resume, images of completed artwork, and a script identifying the images.

During building construction, a panel of seven, composed of a GSA art peer from the GSA Commissioner of Public Buildings' National Register of Peer Professionals (distinguished private-sector design and art professionals appointed by the Commissioner of Public Buildings to critique concept designs under development), an art professional from the city or geographic region of the building project, a representative of the building project's primary Federal occupant agency, a community representative, the project's lead design architect, and two GSA representatives, one representing the Public Buildings Service (PBS) Regional Commissioner and the other the Art in Architecture program office, is convened.

The panel meets to discuss opportunities for artists to participate in the building project. Artists who receive Federal commissions work with the project architects and others as members of a design team are invited to participate to ensure that the artworks are meaningfully integrated into the overall project. GSA's current procedures for this program can be found at

<https://www.gsa.gov/cdnstatic/FINAL%20FOR%20ISSUANCE%20081720%20-%20GSA%20ART%20IN%20ARCHITECTURE%20POLICIES%20AND%20PROCEDURES%20-%20Copy.pdf>. These procedures will be updated upon issuance of the final

rule. The artist selection board is also referenced in the General Services Acquisition Manual (GSAM) section 536.7003-2, available at

https://www.acquisition.gov/content/part-536-construction-and-architect-engineer-contracts#GSAM_536-7003-2.

GSA maintains a public website showing the installed artwork commissioned by the Art in Architecture program, which is available at <https://www.gsa.gov/fine-arts#/gallery/439>.

GSA's intent to modify PBS policies in the final rule will allow the removal of the currently restrictive requirement to prioritize the commissioning of monuments portraying historically significant Americans, significant events in American history or illustrating the ideals upon which the Nation was founded with preference for a realistic style, while soliciting comments to increase civic engagement and enhance the diversity and equity of the Art in Architecture program.

GSA recognizes this program is perhaps not as well known among various communities of artists and, with the publication of this rule, will be partnering with other Federal agencies to highlight the program across communities whose artists have not typically been represented in the Registry. With the publication of this rule, GSA is encouraging artists to apply to the Registry.

Once an artist is chosen to commission a work of art under the procedures in GSAM section 536.70 (available at <https://www.acquisition.gov/content/part-536-construction-and-architect-engineer-contracts#id201HD50D01N>), the artist must register in the System for Acquisition Management at <https://www.SAM.gov> in accordance with Federal Acquisition Regulation (FAR) section 52.204-7 (available at https://www.acquisition.gov/far/part-52#FAR_52_204_7).

III. Discussion of the Final Rule

The elements GSA proposes to rescind are described in detail below together with the policy explanation in each instance. Section 1 of E.O. 14029, “Revocation of Certain Presidential Actions and Technical Amendment,”¹ revoked E.O. 13934, “Building and Rebuilding Monuments to American Heroes.”² Section 2 directed GSA to consider rescinding any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing E.O. 13934. *Id.*

To implement E.O. 13934, GSA issued a final rule on September 25, 2020.³ GSA has now made a determination, consistent with E.O. 14029, to revoke the regulatory amendments that implemented subsections 4(c), (d) and (e) of E.O. 13934 and restore the policies that were previously contained in part 102-77 of the FMR.⁴

Subsection 4(c) of E.O. 13934 directed GSA, to the extent appropriate and consistent with applicable law, to prioritize projects resulting in the installation of a publicly accessible statue of historically significant Americans in communities where a statue depicting a historically significant American was removed or destroyed in 2020.

¹86 FR 27025 (May 19, 2021), <https://www.federalregister.gov/documents/2021/05/19/2021-10691/revocation-of-certain-presidential-actions-and-technical-amendment>.

²85 FR 41165 (July 8, 2020), <https://www.federalregister.gov/documents/2020/07/08/2020-14872/building-and-rebuilding-monuments-to-american-heroes>.

³85 FR 60383 (Sept. 25, 2020), <https://www.federalregister.gov/documents/2020/09/25/2020-20453/federal-management-regulation-fmr-art-in-architecture>.

⁴70 FR 67786 (Nov. 8, 2005), <https://www.federalregister.gov/documents/2005/11/08/05-21644/federal-management-regulation-real-property-policies-update>.

Subsection 4(d) of E.O. 13934 required GSA, in consultation with the Interagency Task Force for Building and Rebuilding Monuments to American Heroes, to revise its Art in Architecture program regulations to prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery. Such works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings.

Subsection 4(e) of E.O. 13934 further required, “When a statue or work of art commissioned pursuant to this section is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation.”

GSA Art in Architecture policy documents outline the specific process by which the Federal Government commissions a work of art for a Federal building. These policy documents detail when an artwork is commissioned, the makeup of the panel that will recommend and review artist candidates, how artists can participate in the program, the criteria for evaluating candidates, and the artist’s development of an art concept.

With this rule, §§ 102-77.21, 102-77.22, and 102-77.23 are removed in their entirety to comply with the direction in E.O. 14029 to consider revoking regulations that implemented the provisions of E.O. 13934. The title of part 102-77 remains as “Art in Architecture” instead of “Art-in-Architecture.” GSA has not used the hyphens when referring to this program for more than 15 years, including in publications, online and in correspondence. The change reflects this usage.

GSA is also updating the definitions to be more inclusive of different visual arts styles and removing references to “fine arts,” which may be interpreted by some to

exclude certain styles and mediums of art and, therefore, many artists from consideration for commission. The broader definition of “visual arts” better reflects current practice in the arts community and supports the goals of E.O. 13985.

IV. Paperwork Reduction Act and Changes Proposed to the National Artist

Registry

The Paperwork Reduction Act (44 U.S.C. 3501-3521) applies to this final rule.

The Office of Management and Budget (OMB) Control Number 9000-0159, “Information Collection; Central Contractor Registration,” supports FAR Clause 52.204-7, which requires an artist to register in the System for Award Management once they are selected and awarded a contract. GSA does not believe any revisions are needed to this information collection.

GSA requested, and OMB has approved, revisions to OMB Control Number 3090-0274, “Art in Architecture Program National Artist Registry,” which supports the GSA Form 7437 used for additions to the Registry. GSA believes these revisions to the form and the information collection are needed to support the goals of E.O. 13895.

The annual public reporting burden for this collection of information through OMB Control Number 3090-0274, “Art in Architecture Program National Artist Registry” (GSA Form 7437), is estimated based on the time for reviewing and completing the collection of information. GSA is planning to conduct an outreach program to promote the Art in Architecture program and the Registry. This is expected to increase the number of annual responses.

Assumptions for reporting burden:

- GSA estimates 850 responses in the first year of reporting based on half of the current Registry population.
- 0.25 hours per response is estimated by the current time to submit artist information to the Registry. The changes to the form include additions

and removals with the net result being no increase in time to complete the form.

- GSA estimates 300 responses per year in the annual updates as estimated by the current annual responses.

The reporting burden for the first year is estimated as follows:

1. Initial Disclosure based on increased outreach by GSA to the artist community

Estimated responses: 850

Estimated hours per response: 0.25

Total Initial Response Burden Hours: 212.5

2. Annual Updates (years two and three)

Estimated annual responses: 300

Estimated hours per response: 0.25

Total Update Response Burden Hours: 75

Public comments are particularly invited on: whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond through the use of appropriate technological collection techniques or other forms of information technology.

V. Expected Impact of this Final Rule

This final rule revokes the regulatory amendments that implemented subsections 4(c), (d) and (e) of E.O. 13934 and restores policies that were previously contained in part 102-77 of the FMR. Accordingly, the only impact from the revocation of E.O. 13934 as effectuated by this final rule is the expansion of the styles of artwork under consideration for commissions within the Art in Architecture program. There are no

other changes to the policies surrounding the consideration of artists. The number of new construction and prospectus-level renovation projects requiring an Art in Architecture commission per year depends on the number of prospectus-level new construction and major repairs and alterations projects approved by Congress. The number of commissions and their value was not affected by the implementation of the prior rule nor is it expected to be impacted by this final rule. Historical averages denote an annual rate of 5 Art in Architecture projects per year with an average cost of \$482,335 per project.

A. Costs to the public for Art in Architecture Panels

The only substantive change in procedures due to this final rule is the consideration of all styles of artwork for commissioning. GSA analyzed the associated costs of the prior rule and this final rule and determined there is no additional cost to the public for the operation and composition of members for the Art in Architecture panels. For the model for both the prior rule and this final rule, GSA assumes two small businesses and two large businesses will continue to be members of the panel. For the model, GSA used the lead designer and the art peer remaining as the large businesses and the community representative and the community art representatives as the small businesses. These assumptions were validated by Art in Architecture staff's review of the composition of previous panels.

GSA calculated the total estimated cost for the lead designer, assuming an average hourly rate of \$127.69 for a senior principal architect, for this part of the rule to be \$10,215 ($= 16 \text{ hours} \times \127.69×5) each year.

GSA calculated the total estimated cost for the art peer, assuming an average hourly rate of \$55.30, for this part of the rule to be \$1,106 ($= 4 \text{ hours} \times \55.30×5) each year.

GSA calculated the total estimated cost for the community representative, assuming an average hourly rate of \$68.13, for this part of the rule to be \$1,363 (= 4 hours × \$68.13 × 5) each year.

GSA calculated the total estimated cost for the community art representative, assuming an average hourly rate of \$55.30, for this part of the rule to be \$1,106 (= 4 hours × \$55.30 × 5) each year.

The cost to the public for the Art in Architecture panels remains the same from the prior rule and this final rule.

B. Public Costs for the Submission of Artist Applications containing their Demographic Information to the National Artist Registry

To align with the Administration's policies and directives, artists within the Registry will be able to submit their demographic information through the Art in Architecture website. The provision of this additional information is optional and will be used to report on the demographic make-up of participants and their reflection to the Nation as a whole. Artists will also be able to indicate their status as a U.S. citizen and, in a change to the form, a lawful permanent resident. The section on media has been updated to reflect current art practice and specifications on materials have been eliminated. GSA estimated the burden to the current artists to be \$11,807 (= 0.25 hours X \$27.78 X 1700) in the second year. GSA estimated the hourly rate of \$27.78 for the artists by using the Bureau of Labor Statistics December 2021 average hourly earnings for other services.⁵

To support the Administration's policies and directives, new artists will submit their information, including key demographic data points, through the Art in Architecture website. GSA estimated the burden to the new artists to be \$5,903 (= 0.25 hours X \$27.78 X 850) in the second year. GSA estimated the hourly rate of \$27.78 for the artists

⁵<https://www.bls.gov/news.release/empsit.t19.htm>

by using the Bureau of Labor Statistics December 2021 average hourly earnings for other services.⁶ GSA estimates the number of submissions will increase by 35% due to the Administration's efforts to heighten awareness of the Registry and motivate artists to register. This will help future assessments of the relationship between U.S. demographic trends and the composition of artists within the Registry.

GSA calculated the estimated number of annual submissions under the prior rule by applying the ratio of estimated annual submissions against the Registry's current population to the number of artists estimated by GSA to be able to be considered for a commission under the prior rule. GSA estimated 31 artists on an annual basis would have submitted information in year 2 of the analysis. Therefore, GSA calculated this cost to be \$215 (= 0.25 hours X \$27.87 X 31). This final rule results in an incremental cost of \$5,688 in year 2 to the public.

To support the Administration's policies and directives, new artists will submit their information, including key demographic data points, through the Art in Architecture website. GSA estimated the burden to the new artists to be \$2,084 (= 0.25 hours X \$27.78 X 300) in years 3-10. GSA estimated the hourly rate of \$27.78 for the artists by using the Bureau of Labor Statistics December 2021 average hourly earnings for other services.⁷ GSA estimates the number of submissions will increase due to the Administration's efforts to heighten awareness of the Registry and motivate artists to register. This will help future assessments of the relationship between U.S. demographic trends and the composition of artists within the Registry.

GSA calculated the estimated number of annual submissions under the prior rule by applying the ratio of estimated annual submissions against the Registry's current population to the number of artists estimated by GSA to be able to be considered for a

⁶Id.

⁷Id.

commission under the prior rule. GSA estimated 31 artists on an annual basis would have submitted information in years 3-10 of the analysis. Therefore, GSA calculated this cost to be \$215 (=0.25 hours X \$27.87 X 31). This final rule results in an incremental cost of \$1,869 per year in years 3-10 to the public.

The following is a summary of the estimated costs to the public calculated within a 10-year time horizon at a 3 and 7 percent discount rate, respectively:

SUMMARY	Total Costs
Present Value (3 percent)	\$28,857
Annualized Costs (3 percent)	\$2,833
Present Value (7 percent)	\$25,028
Annualized Costs (7 percent)	\$2,374

C. Government Costs

Below is a list of activities related to regulatory familiarization that GSA anticipates will occur.

1. Award of Art in Architecture Commissions

As noted above, GSA gathered details of its Art in Architecture projects over the past five years. It was determined an average of 5 projects per year occur with an average cost of \$482,335 per project. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$2,411,675 (= 5 × \$482,335) each year. However, the difference in estimated cost between the prior rule and this final rule is negligible since these commissions were scheduled to be awarded under the prior rule, but to fewer potential artists. This final rule does not change the amount of funding allocated for each project, the number of commissions or the cost of projects and commissions.

2. Workforce Training

GSA calculates it will take one hour in the first year to review and train the workforce on the requirements of this final rule. GSA estimates this cost by multiplying the time required to train the workforce (Art in Architecture staff estimated their workforce to be 18 individuals) by the estimated compensation, on average, of a GS-13. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$1,227 (= 1 hour × \$68.18 × 18).

GSA calculates it will take eight hours in the first year to create material to train the workforce on the requirements of this final rule. GSA estimates this cost by multiplying the time required to develop the material by the estimated compensation, on average, of a GS-14. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$644 (= 8 hours × \$80.56 × 1).

3. Procedures

For each commissioned work of art, a panel composed of art professionals, civic and community representatives, the project's lead design architect, GSA staff, and Federal occupant agency representatives will meet to discuss opportunities for artists to participate in the building project.

GSA calculated the total estimated cost for the Art in Architecture staff to meet the requirements of this final rule for this part of the rule to be \$128,896 (= 5 × \$80.56 × 320 hours) each year. GSA estimates this cost by multiplying the number of projects by the number of hours per project by the estimated compensation, on average, of a GS-14.

GSA calculated the total estimated cost for regional staff to meet the requirements of this final rule for this part of the rule to be \$34,090 (= 5 × \$68.18 × 100 hours) each year. GSA estimates this cost by multiplying the number of projects by the number of hours per project by the estimated compensation, on average, of a GS-13.

GSA calculated the total estimated cost for the United States District Court judges to meet the requirements of this final rule for this part of the rule to be \$4,582 (= 2 ×

\$143.20 × 16 hours) each year. GSA estimates this cost by multiplying the number of projects by the number of hours per project by the estimated compensation, on average, of a U.S. District Court judge.

GSA calculated the total estimated cost for the Federal agency representative to meet the requirements of this final rule for this part of the rule to be \$2,578 (= 2 × \$80.56 × 16 hours) each year. GSA estimates this cost by multiplying the number of projects by the number of hours per project by the estimated compensation, on average, of a GS-14.

GSA calculated the total estimated cost for the Federal occupant agency representative to meet the requirements of this final rule for this part of the rule to be \$1,516 (= 1 × \$94.76 × 16 hours) each year. GSA estimates this cost by multiplying the number of projects by the number of hours per project by the estimated compensation, on average, of a GS-15.

GSA calculated the total estimated cost for GSA staff to review demographic information submitted to the Registry on an annual basis to be \$1,150,542 (= 2,550⁸ × \$68.18 × .5 hours) for years 2-10 for the analysis. GSA estimated the data to be reviewed by a GS-13 based on historical GSA staff responsibilities.

GSA calculated the total estimated cost for GSA staff to compile a report of the submitted and reviewed demographic information from the Registry on an annual basis to be \$80.56 (= 1 × \$80.56 × 1 hour) each year. GSA estimated the report to be compiled by a GS-14, as the staff member issuing the report would be a senior staff member based on historical GSA staff responsibilities.

GSA calculated the total estimated cost for GSA staff to review available technologies to help automate data collection and production of artist demographics to be

⁸It is assumed the artist pool will increase by 300 artists each year, with the Registry starting with an estimated 2,550 artists in year two.

\$4,131 (= 1 x \$57.33 x 8 hours). GSA estimated the review will be completed by a GS-12 based on historical GSA staff responsibilities.

The estimated incremental effect of the change contemplated by this final rule is that the number of artists being considered would increase in year one from approximately 200 artists whose art would realistically depict a historically significant American to 2,550 artists, with incremental increases averaging 300 artists per year in the subsequent years. This effect results in an incremental cost for the government to receive and process additional submissions to the Registry. GSA compared the estimated incremental effects and costs of this final rule against the estimated costs of the prior rule over a 10-year analysis and determined this final rule would increase costs to the Federal Government by \$995,225.⁹

D. Government Total Costs

It is assumed the government incurs a cost savings only in the first year after publication totaling \$14,044.¹⁰ This estimated cost savings is generated by a reduction of time spent on policies and procedures by Art in Architecture staff and Regional Fine Arts Officers in the first year due to the implementation of this final rule. Due to the expanded data collection within the Registry and review of collected data in years 2-10, the government does not estimate to incur a cost savings in any year after the first year. Each year after the first year of publication, the annual cost to the government is assumed to be \$112,141.¹¹ The following is a summary of the estimated costs calculated for a 10-year time horizon at a 3 and 7 percent discount rate, respectively:

SUMMARY	Total Costs
Present Value (3 percent)	\$818,859

⁹Total costs calculated by GSA

¹⁰Id.

¹¹Id.

Annualized Costs (3 percent)	\$80,394
Present Value (7 percent)	\$641,787
Annualized Costs (7 percent)	\$60,887

E. Benefits

Art is a vital tool for civic engagement and participation, building social capital and encouraging civil discourse. It can be a critical investment in placemaking that engenders community pride and enables community development. Due to the prior rule's more restrictive requirements in terms of content and style of art to depict a person or event of historical significance realistically, only 201 artists met these requirements. With this final rule, the pool of artists will expand to all 1,700 members of the Registry regardless of style or medium used. The removal of the content and style requirements increases the opportunity for all artists to participate in the program and be considered for commissions. With GSA's additional outreach, which will begin with publication of this rule, GSA believes the number of artists within the Registry will grow each year, thereby furthering GSA's ability to select a style of art representative of the community in which it will be commissioned.

Therefore, this final rule will align the Registry and the Art in Architecture program with the goals of E.O. 13985. It will increase GSA's ability to connect with local communities and reflect the values, culture and composition of an area in the commissioned art. It will also allow for a potential expansion of professional opportunities for a more diverse set of artists, if their work is chosen.

F. Overall Total Additional Costs of this Final Rule

The overall total additional undiscounted cost of this final rule is estimated to be \$1,027,672 over a ten-year period including the estimated cost savings in the first year.

Analysis of Alternatives

The preferred alternative is the process laid out in the analysis above. However, GSA has analyzed three alternatives to the preferred process.

Alternative 1: GSA could decide to take no regulatory action. No action from the government would lead to fewer artists and artistic styles considered for a commission and would be inconsistent with the President's direction to agencies in E.O. 13985. The public and Government would not incur the additional costs associated with this final rule; however, the benefits of an increased Registry outweigh the incremental costs. As a result, GSA rejected this alternative.

Alternative 2: GSA could take limited regulatory action based on the policy direction of E.O. 13985. However, this alternative would limit GSA's ability to select any medium of art and would limit the expected impact to communities and public buildings, which would not fully be consistent with the President's direction to agencies in E.O.13985. The public and Government would incur a lower cost associated with this final rule; however, the benefits of an increased Registry outweigh the incremental costs. As a result, GSA rejected this alternative.

Alternative 3: GSA could create its own standards in addition to the policy direction of E.O. 13985 to commission works of art. However, this alternative would possibly produce a burden to the Government and the community due to regulatory requirements. It is assumed the costs associated with this alternative would result in a greater incremental cost to the public and Government than what is deemed necessary by GSA to issue this final rule. As a result, GSA rejected this alternative.

VI. Administrative Procedure Act

This rulemaking is exempt from the advance notice-and-comment and delayed-effective-date requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2), because this rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rulemaking relates to GSA's

agency management because it only involves the internal processes of the Art in Architecture program, which applies only to GSA or Federal agencies acting under a delegation of authority from GSA. This rulemaking also relates to public property because it applies to federally owned facilities under the jurisdiction, custody and control of GSA and the work of art itself is government-owned.

VII. Request for Public Comment

In addition to the changes discussed with this final rule, GSA requests comment on the following questions to better understand how the Art in Architecture program can promote the goals articulated in E.O. 13985, as well as promoting civic engagement and participation and democratic values, and advancing social ties and economic development at the community level.

GSA is asking for public input on what steps the GSA Art in Architecture program can take that the agency is not already taking to:

- Consider the interests and perspectives of and proactively engage underserved communities during the commissioning process for a work of art?
- Increase the number and diversity of artists who are considered and shortlisted when commissioning a work of art?
- Understand the local community so that its interests and diversity can be taken into account in the commissioning process for a work of art?
- Quantify the benefits from increased diversity and equity of the artists considered for the Art in Architecture program?
- Enable the commissioned work of art to be accessed by all members of the community?

- Conduct outreach efforts to identify artists who are veterans, who are small or disadvantaged business owners, or who have a disability to encourage them to join the Registry?
- Strengthen public participation engagement of the local community in the commissioning process for a work of art?
- Define “community” for the purpose of reflecting the people and cultural aspects of a place in the commissioned art?
- Ensure that the commission reflects the community in which it will be located?
- Modify the information collected in the Registry beyond what is discussed in this rule to enable GSA to measure how the program aligns with the priorities of equity and inclusion of underserved communities?
- Actively promote the Registry to remove barriers for the widest possible spectrum of eligible artists (*i.e.*, U.S. citizens and lawful permanent residents) to learn about and join the Registry and be considered for commissions?
- Create more learning and professional opportunities for emerging artists through commissions or other steps?
- Take advantage of the expertise and capacities of other Federal agencies, including the National Endowment for the Arts, and State and local arts agencies in implementing the Art in Architecture program?
- Ensure the Art in Architecture program advances democratic values and strengthens the experience of democracy and inclusion in America?

To understand the exact scope of the impact of this final rule and the effect of this impact, GSA welcomes input on the following assumptions and questions regarding the anticipated impact on affected parties.

- Assumption 1: GSA estimates that this final rule will not impact the commissioning of works of art. If this assumption is not correct, are there artists to which this rule will cause significant impact or disruption?
- Assumption 2: The impact of this rule will not significantly change the way GSA interacts with the Registry. If this assumption is not correct, to what extent will this final rule, specifically the revised elements of part 102-77 of the FMR, change how GSA interacts with the Registry?

VIII. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is a significant regulatory action and, therefore, was subject to review under subsection 6(b) of E.O. 12866, “Regulatory Planning and Review,” dated September 30, 1993.

IX. Congressional Review Act

This final rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the Federal Register. The OMB Office of Information and Regulatory Affairs has determined that this final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

X. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it applies to agency management or personnel.

List of Subjects in 41 CFR Part 102-77

Federal buildings and facilities, Government property management, Rates and fares.

Robin Carnahan,
Administrator of General Services.

For the reasons set forth in the Preamble, GSA hereby revises 41 CFR part 102-77 to read as follows:

PART 102-77—ART IN ARCHITECTURE

Subpart A—General Provisions

Sec.

Scope

102-77.5 What is the scope of this part?

Definition

102-77.10 What definition applies to this part?

Policy

102-77.15 What basic Art in Architecture policy governs Federal agencies?

Subpart B—Art in Architecture

102-77.20 Who funds the Art in Architecture efforts?

102-77.25 With whom should Federal agencies collaborate when commissioning visual art for Federal buildings?

102-77.30 Do Federal agencies have responsibilities to provide national, regional, and local visibility for Art in Architecture?

Authority: 40 U.S.C. 121 and 3306.

Subpart A—General Provisions

Scope

§102-77.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service, operating under, or subject to, the authorities of the Administrator of General Services.

Definition

§102-77.10 What definition applies to this part?

Visual art means works, including, but not limited to, painting, sculpture, architectural or environmental art, time-based media, and works on paper.

Policy

§102-77.15 What basic Art in Architecture policy governs Federal agencies?

Federal agencies must incorporate visual art as an integral part of the total building concept when designing new Federal buildings and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The commissioned art must reflect the national, regional, or local cultural heritages, or any combination of the foregoing, within the United States, and emphasize the work of living American artists, including those in underserved communities.

Subpart B—Art in Architecture

§102-77.20 Who funds the Art in Architecture efforts?

To the extent not prohibited by law, Federal agencies must fund the Art in Architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings or of completing major repairs and alterations of existing buildings. Funding for qualifying projects, including new construction, building acquisitions, and prospectus-level repairs and alterations, must be in a range determined by the Administrator of General Services.

§102-77.25 With whom should Federal agencies collaborate when commissioning visual art for Federal buildings?

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in commissioning a work of visual art. Federal agencies should collaborate with the chosen artist to commission works of visual art that reflect the cultural, intellectual, and historic interests and values of the community in which the art

is to be located. In addition, Federal agencies should work collaboratively with the architect of the building and art professionals in commissioning visual art for Federal buildings. Federal agencies should commission a work of visual art that is diverse in style and media and no official style or media are mandated.

§102-77.30 Do Federal agencies have responsibilities to provide national, regional, and local visibility for Art in Architecture?

Yes. Federal agencies should provide Art in Architecture that receives appropriate national, regional, and local visibility to encourage participation by a large, diverse, and equitable group of artists representing a wide variety of types of visual art.

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